

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR08-1120

THOMAS JUSTIN TIPPS,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered 6 MAY 2009

APPEAL FROM THE ASHLEY
 COUNTY CIRCUIT COURT,
 [NO. CR06-156-4]

THE HONORABLE DON GLOVER,
 JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

John Murdaugh took his brown and tan 1988 Dodge Dakota pickup truck to Bill's Garage in Portland, Arkansas for a transmission repair. Keys inside, the vehicle disappeared from the parking lot before Murdaugh picked it up. Neither Murdaugh nor Bill's Garage had authorized anyone to take the truck. About a week later, Thomas Tipps confessed that he had taken a brown and tan Dodge Dakota truck from Bill's Garage, driven it to a body shop, and sold it for \$150.00. A jury convicted Tipps of Class B felony theft. Ark. Code Ann. §§ 5-36-101(12)(A) & 103 (Supp. 2007). Tipps appeals, making two sufficiency challenges: He says that the evidence failed to prove that the truck was worth at least \$2,500.00 or that a crime occurred.

Murdaugh testified that he paid \$5,500.00 for the truck about seven years before it went missing. He drove it daily; it had good wheels and a transmission problem;

and he testified that his pick-up “was worth more than, you know, \$2,500.” For sentimental reasons, Murdaugh said that the truck was worth “at least \$5000.00” to him. An employee at Bill’s Garage who had worked on the vehicle on “numerous occasions” also put a value on the truck. Without objection, he testified that Murdaugh’s pick-up was worth “about \$2,500.00.” He testified that Bill’s Garage bought vehicles in the past, but had quit dealing in used cars. The employee also said that he was no expert in looking at vehicles and putting a price on them.

Taken as a whole, this record provided substantial evidence on the pick-up’s fair market value when it disappeared. We put aside Murdaugh’s sentimental valuation. Given the passage of time between purchase and theft, Murdaugh’s testimony about what he had paid for his truck, maintenance, and condition provided relevant but not conclusive circumstantial evidence on value for purposes of the statute. *Ayers v. State*, 334 Ark. 258, 268, 975 S.W.2d 88, 93–94 (1998). The additional testimony from the employee of Bill’s Garage, however, made a jury question on value. Expert testimony, as Tipps urges, would have been better proof. *Ayers*, 334 Ark. at 268, 975 S.W.2d at 93. But Tipps did not object to the employee’s valuation testimony, and cross-examined the employee about his knowledge of this particular truck. Added to Murdaugh’s opinion, the employee’s lay opinion, based as it was on his personal knowledge, suffices. Ark. R. Evid. 701; *Ross v. State*, 300 Ark. 369, 379–80, 779 S.W.2d 161, 166 (1989).

Tipps confessed to taking a truck like Murdaugh's from Bill's Garage. Because Tipps did not repeat his confession in open court, however, the State had to offer other proof that someone committed the crime of theft. Ark. Code Ann. § 16-89-111(d) (Repl. 2005). In the old phrase, the State had to show the *corpus delicti*. *Ferrell v. State*, 325 Ark. 455, 460, 929 S.W.2d 697, 701 (1996). It did. The testimony of Murdaugh and the Bill's Garage employee established that someone took the pick-up from the parking lot without permission.

Affirmed.

VAUGHT, C.J., and BAKER, J., agree.